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10/665,731	09/17/2003	Wanda Kwiatkowski Dags	03018	4673

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ROBERT W PITTS
PO BOX 11483
WINSTON-SALEM, NC 27116-1483

EXAMINER

BASINGER, SHERMAN D

ART UNIT PAPER NUMBER

3617

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/665,731

Applicant(s)

DAGGS, WANDA KWIATKOWSKI

Examiner

Sherman D. Basinger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michalochick et al in view of O'Link.

Michalochick et al disclose a buoyant shirt 12 comprising a personal floatation device for a wearer with inner and outer layers (see column 3, lines 9-12) forming a shirt configuration with an enclosure between the inner and outer layers with an upper opening 20 for a wearer's neck extending through both inner and outer layers, and with two side openings 18 through which the wearer's arms can extend being formed through the inner and outer layers on opposite sides of the upper opening, and a buoyant material 30 being confined within the enclosure between the inner and outer layers, the buoyant material extending between the upper openings and each side opening between a front portion of the enclosure to a rear portion of the shirt.

Michalochick et al does disclose a front bib section with protrusions 34 extending from a top of the bib section on both sides of the upper opening, but does not disclose floatation material extending beneath both side openings between the front portion of

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the enclosure and the rear portion of the enclosure. Note that the bib 2 of O'Link has protrusions 20 with flotation element 18 shown by broken lines in figure 5 to extend beneath the side openings for the arms between the front portion 2 of the enclosure and rear portion 3 of the enclosure. It would have been obvious to provide flotation material 30 of Michalochick et al with protrusions similar to those on flotation element 18 of portions 20 of O'Link so that flotation material extending beneath both side openings between the front portion of the enclosure and the rear portion of the enclosure would be provided. Motivation to do so is to have the foam member of Michalochick et al provide flotation material under the arms of a wearer to help keep the foam member from riding up the torso of the wearer of the swimwear.

As such, buoyant material would be located on both the front and rear of a wearer's torso and beneath both side openings so that the protrusions would extend from a wearer's front torso to a wearer's rear torso.

The buoyant material 30 of Michalochick et al has sufficient volume to hold the wearer's head above water.

It is considered that 12 of Michalochick et al has a tee shirt configuration such that the wearer's head and arms can be inserted respectively through the upper openings and side openings when the buoyant shirt is donned.

In Michalochick et al the inner and outer layers are joined together around the upper opening and the side openings, the inner and outer layers are stitched

together around the upper opening and the side openings, the inner and outer layers are formed of an expandable material having a elasticity greater than natural textile fibers (see column 3, lines 50-55), and the buoyant material comprises a one-piece member having sufficient flexibility to be draped over a wearer's shoulders and around a wearer's sides beneath a wearer's armpits (see column 1, lines 62-65).

3. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michalochick et al in view of O'Link and Cohn.

Michalochick et al discloses a personal floatation device including a buoyant foam member 30 fitting over a wearer's shoulders to fit over the majority of the front and rear of the wearer's upper torso, the buoyant foam member directly supporting the wearer's upper torso to maintain the wearer's head above water.

The buoyant foam member 30 of Michalochick et al does not fit beneath the wearer's arms wherein the buoyant foam member while having a solid trunk section 32 which fits over a wearer's front torso, does not have protrusions extending around the wearer's torso, the ends of these protrusions being spaced apart on a wearer's back torso.

The bib 32 of Michalochick et al does not have these protrusions. Note the that the bib 2 of O'Link has such protrusions in flotation element 18 of portions 20. It would have been obvious to provide the floatation member 30 of Michalochick et al with protrusions

similar to those of flotation element 18 of portions 20 of O'Link. Motivation to do so is to have the foam member of Michalochick et al provide flotation material under the arms of a wearer to help keep the foam member from riding up the torso of the wearer of the swimwear.

The buoyant foam member 30 of Michalochick et al while comprising a one-piece member folded to fit over the wearer's shoulders, is not disclosed as being initially flat. Cohn discloses foam members 13 and 26 which are initially flat and placed between materials 8 and 12. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains in view of the teachings of Cohn to make the foam member 30 of Michalochick et al initially flat such that it is folded into its shape when placed into the swimsuit. Note that the member 30 of Michalochick et al is a flexible foam. Motivation to do so is to save on the cost of having to mold the foam member to the shape desired.

When the foam member of Michalochick et al is modified with the teachings of O'Link, it will be folded to fit around the wearer's sides beneath the wearer's arms and constrained in a folded configuration to fit the wearer's upper torso and side openings for a wearer's arms will be formed between edges of protrusions on the buoyant foam member when in a folded configuration.

The buoyant foam member 30 of Michalochick et al is constrained by an outer garment 12 formed by inner and outer fabric layers surrounding the

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buoyant foam member and wherein the inner and outer fabric layers are formed of material having a greater elasticity than natural textile fibers-see column 3, lines 50-55.

The buoyant foam member 30 of Michalochick et al is free to shift between the inner and outer fabric layers (see column 3, lines 10-20) and the outer garment 12 completely surrounds the upper torso of its wearer and can be donned by insertion of the wearer's head, neck and arms through openings in the outer garment and gaps in the foam member.

4. Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michalochick et al, O'Link and Cohn as applied to claim 1 above, and further in view of Le Blanc, Jr.

Michalochick et al does not disclose that the buoyant foam member is cut from a larger flat foam sheet so that multiple buoyant foam members for use in personal floatation devices can be cut from standard foam sheets. Note the teachings in column 4, lines 10-end of Le Blanc, Jr. In view of this teaching it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to cut the buoyant foam member 30 of Michalochick et al from a larger flat foam sheet so that multiple buoyant foam members for use in personal floatation devices can be cut from standard foam sheets.

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Michalochick et al when modified with O'Link, Cohn and Le Blanc, Jr. discloses a one-piece vest 30, cut from a flat, flexible buoyant material (Le Blanc, Jr.), the one-piece vest 30,

when in a flat configuration having a central trunk section 32 with a generally curved opening above the trunk section and spaced from a top edge thereof with a slot extending from the generally curved opening to the top edge thereof to form opposed upper segments 34 on opposite sides of the slot and the curved opening, the one-piece vest 30, when

in the flat configuration (Cohn), also including wings (O'Link) extending from opposite side edges of a trunk section 32 adjacent the lower edge thereof,

the one-piece vest being folded about a generally horizontal axis to form the personal flotation device so that the upper segments extend behind and are spaced from the trunk section so that the generally curved opening will surround the neck of a wearer of the personal flotation device, and with the wings being folded about generally vertical axes to also extend behind and spaced from the trunk section with the wings and the upper segments forming arm passages through which the arms of the wearer can extend,

the one piece vest being restrained in the folded configuration when worn so that the one-piece vest extends over the wearer's shoulders and under the wearer's armpits to support the wearer's torso.

The personal floatation device of Michalochick et al has the one-piece vest 30 disposed

between inner and outer layers (see column 2, lines 59-62), has the inner and outer layers comprising fabric layers joined around the generally curved opening forming a neck opening 20 and around openings along opposite sides to form arm openings 18, and has the wings provided in view of the wings of flotation element 18 of portions 20 of O'Link free to laterally shift between the inner and outer layers so that the personal flotation device can fit wearers of different sizes.

Michalochick et al does not disclose the one-piece vest as comprising a die cut member; however, in view of what is taught by Le Blanc Jr., it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use a die to cut the vest 30 of Michalochick et al. Motivation to do so is that by using a die to cut the vest from a blank of foam as opposed to using scissors, a better cut will result.

Response to Arguments

5. Applicant's arguments filed 12/20/2004 have been fully considered but they are not persuasive.

6. Applicant's first argument concerns O'Link. Applicant feels that the flotation element 18 does not extend beneath the arms of the wearer. In rebuttal, it is felt that figure 2 of O'Link clearly shows the flotation member 18 extending into an area which would be beneath the arms of a wearer. Figure 5 of O'Link would also support this. Figure 2 shows the flotation element 18 extending to almost the edge of fastener device 23. In figure 5 the edge of fastener device 23 is beneath the arm. Thus, if, as in figure

2, the flotation element extends to almost the edge of the fastener device 23, then in figure 5, it can be presumed that the edge of the flotation element 18 likewise does so so as to be under the arm.

7. Applicant's arguments with respect to putting on the garment over the wearer's head in the manner of putting on a tee shirt are rebutted as follows. The limitations which define how the garment is put on define intended uses of the garment. No structure is defined in such claims. In response to such an argument, it is pointed out that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

8. Applicant's arguments that the references also cannot be relied upon to teach a device which uses a one piece buoyant vest which can be cut from a flat flexible buoyant material as required by claim 9 are rebutted as follows. First, it is recognized that floatation member 30 of Michalochick is most likely a molded member although Michalochick does not state that it is. However, this does not prevent such a member even when modified to have wings which provide flotation material beneath the arms from being cut from a flat piece of material. Le Blanc, Jr. discloses cutting slabs 21 from a flat piece of blank material. Note that slabs 21 have wing portions forming part of an opening for a neck. While Le Blanc, Jr. makes his vest with a number of separate pieces of floatation material, this doesn't mean that the vest cannot be made from a

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single piece of floatation material. Michalochick et al supplies the teaching of making the floatation material from a single piece of flexible soft buoyant material. Due to this flexibility this material can be shaped inside the plies of mesh material covering it.

Applicant has not given sufficient reason why the floatation member 30 of Michalochick cannot be cut from a flat blank of material as taught by Le Blanc, Jr., especially in view of the material of Michalochick being flexible soft foam.

9. With regard to the arguments free to shift of claim 4, surround the upper torso of claim 5, spaced apart on a wearer's rear torso of claim 6, joined around the generally curved opening forming a neck opening of claim 11, wings free to shift of claim 12, tee shirt configuration of claim 15, joined together around the upper openings and side openings of claim 16 and extend from a wearer's front torso to a wearer's rear torso of claim 20, these arguments are rebutted as follows.

Because the floatation material is not attached to the inner and outer fabric in Michalochick et al and in one embodiment is (see column 3, lines 10-20) removable from the fabric, it is free to shift within the fabric.

The garment of Michalochick et al clearly surrounds the upper torso of its wearer as is shown by the drawings of Michalochick et al.

As shown in figure 4, the floatation material 30 of Michalochick et al is spaced apart on a wearer's rear torso.

As shown by the drawings in figures 1 and 2 of Michalochick et al the inner and outer layers of the fabric of Michalochick et al are joined at the curved opening forming a neck opening.

If the floatation material of Michalochick et al is provided with wings in view of the teachings of O'Link, then the wings too will not be attached to the inner and outer fabric of Michalochick et al and will be free to shift.

Upper component 12 of Michalochick et al is configured in one type of t-shirt configuration-a sleeveless t-shirt.

With regard to claim 20, these protrusions are provided to the floatation member 30 of Michalochick et al in view of the floatation member 18 of O'Link extending beneath the armpits.

10. For the above reasons, the rejections stand.

Conclusion


11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 703-308-1139. The examiner can normally be reached on M-F (6:00-2:30 ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Sherman D. Basinger
Primary Examiner
Art Unit 3617
1/11/05

sdb
1/11/05